

REMARKS

Claims 1-159 are pending in the application. Claims 11-15, 18, 20-22, 25, 26, 36, 37, 39-51, 54-92, 105-108, 113-115, 118, 119, and 131-159 have been withdrawn from consideration. By this Amendment, the specification has been amended to correct minor informalities, and claims 1, 82, and 93 have been amended. No new matter has been entered.

In the Office Action, claim 93 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Examiner asserted that "it is unclear as to what the applicant means by 'one application element is one of secured to the second portion and separated from the first portion and the second portion.'" In response, although Applicant does not necessarily agree with the Examiner's assertion, Applicant has amended claim 93, without narrowing its scope, to recite that "at least one application element is secured to the second portion or separated from the first portion and the second portion." Thus, Applicant respectfully requests reconsideration and withdrawal of this rejection under 35 U.S.C. § 112, second paragraph.

Claims 1-4, 6-10, 16, 17, 19, 23, 24, 30-35, 38, 52, 53, 93-101, 103, 104, 109, 110, 112, 116, 117, 123-125, 127, 129, and 130 were rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 1,461,630¹ ('630 Patent). In addition, claims 1-8, 16, 17, 23, 24, 30, 32-35, 38, 52, 53, 93-99, 109, 110, 116, 117, 123-127, 129, and 130 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,534,259 to Dempsey. As explained below, Applicant respectfully submits that these

¹ An English language translation of French Patent No. 1,461,630 and a courtesy copy of counterpart United Kingdom Patent No. 1,158,412 are attached to this Amendment.

rejections should be withdrawn.

Each of independent claims 1 and 93 has been amended to positively recite a "cosmetic or care product." As is abundantly clear, both the '630 Patent and Dempsey lack disclosure of that positively recited subject matter. For example, the '630 Patent discloses a cap for tubes of polish or pasty products. Similarly, Dempsey discloses a polishing device including a container containing polish. For at least these reasons, independent claims 1 and 93 are patentably distinguishable from the '630 Patent and Dempsey. Accordingly, Applicant respectfully requests reconsideration and withdrawal of these rejections under 35 U.S.C. § 102(b) based on the '630 Patent and Dempsey.

Claims 27-29 and 120-122 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '630 Patent or Dempsey.

Claims 27-29 depend from independent claim 1, and claims 120-122 depend from independent 93. As discussed above, independent claims 1 and 93 are patentably distinguishable over '630 Patent and Dempsey. Thus, at least by virtue of their dependencies, claims 27-29 and 120-122 should also be allowable.

In addition, since generic claims 1 and 93 are allowable, Applicant respectfully requests that claims 11-15, 18, 20-22, 25, 26, 36, 37, 39-51, and 54-59 (which depend from allowable independent claim 1) and claims 105-108, 113-115, 118, 119, and 131-142 (which depend from allowable independent claim 93), all of which had been withdrawn from consideration, be rejoined in this application and be allowed at least by virtue of their dependency from allowable independent claims 1 and 93.

Regarding the prior election of species requirement, Applicant previously elected to prosecute Species I, Figs. 1-3 and 5, and indicated that at least claims 1-10, 16, 17,

19, 23, 24, 27-39, 51-53, 60-104, 109, 110, 112, 116, 117, 120-127, 129, 130, 131, and 133-142 are "readable" upon the elected Species I. Despite that designation of claims, the Examiner withdrew claims 36, 37, 39, 51, 60-92, 102, 131, and 133-142 from consideration, asserting that they "read on other non-elected species."

Applicant respectfully disagrees with the Examiner's withdrawal of claims from consideration and respectfully requests reconsideration of that withdrawal. M.P.E.P. § 821 requires the Examiner to set forth a detailed explanation of why claims withdrawn from consideration are not readable on the elected species. Contrary to that requirement, no such detailed explanation is set forth in the Office Action and there does not appear to be any basis for the claim withdrawal. For example, the Office Action does not explain why claim 60 was withdrawn from consideration even though all of the subject matter of that claim is clearly shown in Figs. 1-3 and 5, and there is no explanation of why claims 61-80, 84-92, and 134-142 were withdrawn from consideration despite the fact that the methods recited in those claims could be performed using subject matter shown in Figs. 1-3 and 5. The mere fact that certain claims might be readable on "other non-elected species" while also being readable on the elected species does not provide any sufficient basis for the withdrawal of those claims.

Applicant also respectfully disagrees with the Examiner's apparent characterization of the elected species of Figs. 1-3 and 5 and the withdrawal of claims based on that apparent characterization. In particular, the Examiner appears to assert that, in order for a claim to be considered as readable on the elected species, all of the subject matter in that claim must be shown in Figs. 1-3 and 5 and, based on this

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

assertion, the Examiner withdrew certain claims (e.g., claims 36, 37, 39, 51, 81-83, 102, 131, and 133) that recite any subject matter not shown in Figs. 1-3 and 5 (e.g., features of a receptacle, such as dip tube, pump, etc.).

Applicant respectfully submits, however, that Figs. 1-3 and 5 show various embodiments of a removable unit, which clearly can be used in combination with various embodiments of receptacles shown in, for example, Figs. 10, 14, 15, 16, 19, 20, 24, and 25. According to Applicant's understanding, the prior election of species requirement was directed only to various embodiments of the removable unit. Applicant's understanding is based on the fact that the Examiner required a single election of species among various asserted groups of figures (i.e., Figs. 1-3 and 5; Figs. 4 and 21; Fig. 6; Figs 7-9; Figs. 10-12; Fig. 13; Figs. 14, 19, and 20; Fig. 15; Fig. 16; Figs. 17 and 18; Fig. 22; Fig. 23; and Figs. 24 and 25) in which the subject matter common to all of those asserted groups of figures is a removable unit. Because the election of species requirement was apparently applied only to the various embodiments of the removable unit, Applicant submits that claims reciting features of various embodiments of receptacles should be examined.

For at least these reasons, Applicant respectfully submits that claims 36, 37, 39, 51, 60-92, 102, 131, and 133-142 should be rejoined to this application and examined. If the Examiner continues to withdraw those claims from consideration, Applicant respectfully requests that the Examiner supply an explanation as required by M.P.E.P. § 821 and that the Examiner make any further claim withdrawal final, while also acknowledging Applicant's traversal so that Applicant will be entitled to file a petition to the Group Director seeking review of the Examiner's claim withdrawal.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

The Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicant declines to subscribe automatically to any statement or characterization in the Office Action, regardless of whether it is addressed above.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 30, 2003

By:


Anthony M. Gutowski
Reg. No. 38,742

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

ATTACHMENTS

- English language translation of French Patent No. 1,461,630
- United Kingdom Patent No. 1,158,412.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

French Patent No. 1,461,636

Cap with spreader-pad, for tubes of polish or other
pasty products

5

Summary of the invention

The subject of the present invention is the novel
industrial product which consists of a cap intended for
10 fitting onto a tube made from malleable material and
containing a pasty product for spreading, for example
polish, this cap being essentially defined in that it
consists of a hollow body which includes means enabling
it to be fastened onto the neck of the tube whose
15 normal cap has been previously removed, this hollow
body receiving a spreader-pad which is secured to a
cover having a suitable gripping member; this pad, in
contact with the product contained in the tube, being
impregnated when a pressure is exerted on it and being
20 capable, once removed from its housing, of being used
for spreading said product.

Of course, the invention extends to the malleable tubes
which contain polish or other pasty material, which are
25 equipped with a cap according to the invention.

Description of the drawings

To facilitate understanding of the invention, a
30 description will now be given by way of illustration
and without any limitation being implied, of an
embodiment which is taken as an example and which is
shown in the appended drawing.

35 In this drawing:

Figure 1 is an exploded view showing, in perspective,
the component elements of the cap and a tube onto which
it may be fitted;

Figure 2 is a partial sectional view of the cap fitted onto the threaded neck of the tube.

Description of the preferred embodiment

5

With reference to the drawing, it may be seen that the cap according to the invention consists of a sleeve 1 which has a partition 2 which has, in its central part, a passage 3 pierced with a tapped orifice. This tapped
10 orifice is intended for receiving the conventional threaded neck of a malleable tube 5 containing polish or another, similar material.

The sleeve 1 is associated with a removable cap which
15 comprises a disk 6 which has a head 6a on its upper face and, on its lower face, a collar 6b forming a dish. A pad 7, for example a pad made from polyvinyl foam, is secured in this dish.

20 As will be understood by reference to Figure 2, the boss 3 being screwed onto the neck 4 of the tube 5 from which the cap has been removed, when pressure is applied to the tube the product it contains is forcibly expelled through the opening in the neck and the pad 7
25 is impregnated, and may then be used, after it has been removed, for spreading the product over a shoe or any other surface.

It is, of course, understood that the embodiment
30 described above has no limiting character and may receive all desirable constructional modifications without thereby departing from the scope of the invention.

Claims

The subject of the present invention is the novel industrial product formed by:

5

1. A cap intended for fitting onto a malleable tube containing a pasty product to be spread, consisting essentially of a hollow body which includes means for fastening it onto the neck of the tube from which the
10 cap has previously been removed, this hollow body receiving a spreader-pad which is secured to a cover which includes a suitable gripping member; this pad being impregnated with product when a pressure is exerted on the tube and being capable, once removed or
15 taken out of its housing, of being used for spreading said product.

2. A malleable tube, containing polish or another pasty material, which has a cap as specified in claim 1.

N° 1.481.630

Société Anonyme called:
Société des Etablissements F. Pfister & C^{ie}

Single plate

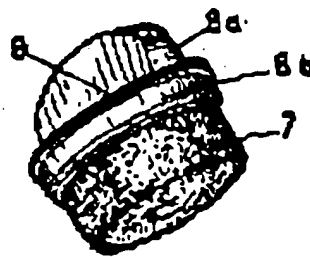


FIG. 1

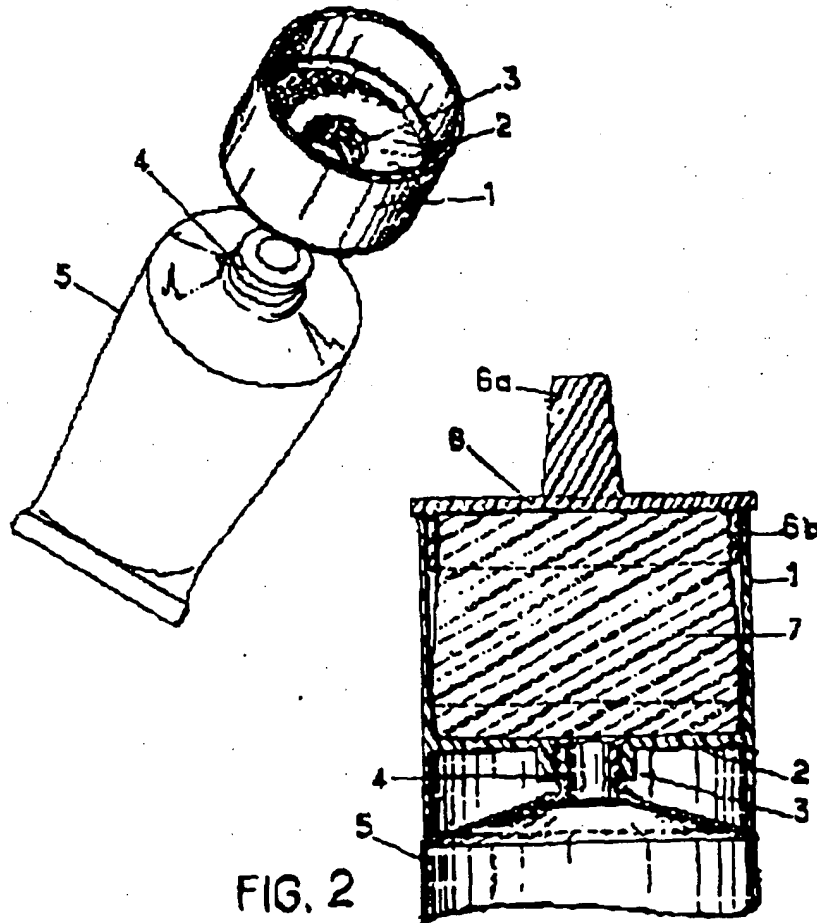


FIG. 2